

# Exhibit A

1 with you. I need to collect my thoughts.

2 (Recess taken at 3:35 p.m.)

3 (Proceedings resumed at 4:24 p.m.)

4 THE COURT: All right. I think we're all back. It's  
5 been a lengthy case and a lot of documents, but I think I can  
6 summarize the Court's thoughts on this. We're here today on  
7 confirmation. The Chapter 13 trustee and Ms. Burton and  
8 Ms. Thomas, the creditors, all object to confirmation. The  
9 objecting creditors and the Chapter 13 trustee are also  
10 requesting that the case be converted to Chapter 7. While the  
11 objecting parties had the initial burden to produce evidence in  
12 support of their objections, the debtor has the ultimate burden  
13 to show that the requirements of 1325 have been met. For the  
14 following reasons, which represent the Court's findings of fact  
15 and conclusions of law, the Court finds now that the debtor has  
16 not met his burden, and that confirmation must be denied.

17 The following issues have been raised: whether he  
18 filed -- whether the debtor filed his petition in good faith  
19 under 1325(a)(7); whether the debtor filed his plan in good  
20 faith, 1325(a)(3); and three, whether the plan proposes to pay  
21 creditors less than they would receive under a Chapter 7  
22 liquidation, 1325(a)(4); and four, whether the plan proposes to  
23 pay all disposable income during the life of the plan,  
24 1325(b)(1)(B). Excuse me.

25 Initially, the Court wants to clarify that in ruling



1 on confirmation, we are here on the plan actually filed by the  
2 debtor. Today, for the first time, the debtor offered  
3 additional equity, but this case has been pending almost eight  
4 months, and the contested nature of this confirmation has been  
5 known all during that time. Nor is the Court taking into  
6 consideration amounts to be paid though any unfiled Chapter 11  
7 plans. Those are not before the Court at this time. The  
8 really -- the truly decisive issue in this case is whether the  
9 debtor filed his petition in good faith, and or plan in good  
10 faith. And in determining good faith, the Court must look at  
11 the totality of the circumstances, and I point the parties to  
12 In re Caldwell (6th Cir. 1990), and also Laguna Associates (6th  
13 Cir. 1994). While the Sixth Circuit has listed many factors to  
14 consider, no list is exhaustive. Based on the following facts  
15 of this case, the Court finds that neither the debtor's  
16 petition, nor his plan, were filed in good faith.

17           Initially, it is impossible to determine whether the  
18 debtor's statements and schedules are accurate. The proof has  
19 shown that the debtor has failed to disclose, and has  
20 undervalued assets. For example, the debtor listed \$11,000 in  
21 a Robinhood account that was purchased in the debtor's name.  
22 Yet he failed to include an additional \$19,000 in cash being  
23 held in the Robinhood brokerage account as of the date of  
24 filing. The debtor only values his real property at \$104,000  
25 based on tax records alone. This amount does not include the



1 128 to 150 trees that are on the property, some of which he  
2 stated initially were marketable. Perhaps not all, but some  
3 were marketable. And these trees were only disclosed at the  
4 2004 examination. The debtor also undervalued his hundred  
5 percent ownership and interest in LG Ornamentals, LLC and  
6 Livingscapes, LLC. In the petition, the debtor valued both  
7 businesses, which are both in Chapter 11, at zero. In LG  
8 Ornamentals, the corporate debtor listed approximately 2,500 in  
9 assets, and no debt. Additionally, at the LG Ornamentals  
10 meetings of creditor - meeting of creditors, the debtor's  
11 testimony indicated that the company owned approximately \$7,500  
12 in inventory, which had not been listed.

13 In his testimony today, the debtor testified that 120  
14 to 150 trees belonged to him simply because they were on his  
15 property. In Living Landscapes, LLC, the operating reports  
16 show that in four months it grossed one million, and  
17 accumulated approximately \$6,500 in cash. The debtor also  
18 failed to disclose hundreds of trees and shrubs located on a  
19 friend's property in Watertown, Tennessee. The debtor valued  
20 these assets today at zero because he said the trees are too --  
21 the trees and shrubs are too large for him to remove. Even if  
22 the debtor correctly assessed the value to be zero, he had a  
23 duty to fully disclose all assets. And based on the testimony  
24 of Ms. Burton, the debtor spent a significant amount of time  
25 and resources to cultivate trees and shrubs on that property



1 when she worked there in 2019, indicating that a value of zero  
2 is likely not true.

3           The debtor's disclosure of income, both pre- and  
4 post-petition income, has not been complete or truthful. The  
5 debtor's original statement of current monthly income and  
6 Chapter 13 calculation of disposable income, both signed under  
7 penalty of perjury, indicated a monthly income of \$5,000. Yet  
8 the debtor filed his amendment state - amended statement of  
9 current monthly income on March 9th, less than a week before  
10 this hearing, claiming that his average monthly income during  
11 the six months prior to bankruptcy was only \$3,940, amended  
12 from \$5,000. This change takes the debtor from above median to  
13 below median, and certainly doesn't account for the \$72,556.14  
14 in draws from Livingscapes, LLC.

15           The door -- debtor's sworn interrogatory responses  
16 from his pending child support litigation in Davidson County,  
17 wherein he stated that his salary for the last three years has  
18 been \$80,000 a year, while he received more than that in draws  
19 because he did not file his W2 payroll form until June, 2020,  
20 right before he filed his Chapter 13 petition. That W2 shows  
21 \$80,000, but it doesn't account for the last three years before  
22 that, which were more than \$80,000 a year. The quarterly wage  
23 report for Livingscapes, LLC, employee wages shows the year to  
24 date wages paid to the debtor to be \$10,769.22, as of August  
25 the 3rd, 2020. This document also lists the debtor's salary to



1 be \$80,000, which is paid weekly.

2           Is this -- as if this wasn't confusing enough, the  
3 debtor admits he took draws from Livingscapes, LLC business  
4 operations account whenever he needed to pay personal expenses  
5 or to buy stock in his personal account. These have not been  
6 included in his statement of currently monthly income. And  
7 based on back statements, these draws were significant.  
8 Livingscapes, LLC business operations commercial checking  
9 statements show that the debtor took substantial owner draws  
10 for personal expenses out of Livingscapes, LLC's operating  
11 account during the full six month prior to filing for  
12 bankruptcy, including for Robinhood investments, \$38,145.50,  
13 Venmo payments, \$26,460, E\*TRADE payments, \$5,000, and PayPal  
14 payments, \$2,950.64, for a total of \$72,556.14 in undisclosed  
15 personal expenditures and draws from Livingscapes, LLC. None  
16 of this was listed as income or other benefits, including  
17 health insurance, and cell phone uses listed.

18           In addition, the debtor provided a 2020 business  
19 expenses report for Livingscapes, LLC which identified line  
20 item Amex business charges, totaling \$58,854.56 on two credit  
21 cards, one personal and one business. Despite the light on --  
22 lie -- line -- I can't even say it -- line item charges of  
23 \$58,854.56, Livingscapes, LLC paid \$160,713.44 on the Amex  
24 cards during the first seven months on 2020. So that's over a  
25 hundred thousand in Amex payments made from Livingscapes, LLC's



1 operation account were not itemized, leading to the logical  
2 conclusion that these payments were undisclosed as prepetition  
3 income.

4           The debtors only switched to being a salaried income  
5 making \$80,000 a year with child support litigation pending.  
6 And just before the filing for -- just before filing for  
7 bankruptcy protection. In addition to the income the debtor  
8 has not disclosed, the proof shows a likelihood that the debtor  
9 will have increased income. The debtor is the hundred percent  
10 owner of two businesses, which based on their operating  
11 reports, are continuing to make money.

12           Originally the debtor proposed a five-year plan.  
13 However, in the amended 22(c) form filed the week before the  
14 hearing, the debtor changed his income to below the median  
15 family income, meaning that he would only have to commit to a  
16 period of three years, rather than five. In light of the  
17 undisclosed income, a three-year plan is not reasonable. The  
18 accuracy of the debtor's debts and expenses, and the percentage  
19 the debtor proposes to pay unsecured creditors also supports a  
20 finding of bad faith. On Schedule F, the debtor listed only  
21 \$18,416.13 in non-priority unsecured claims. The objecting  
22 creditors' claims are listed as unknown, even though demand  
23 letters were sent shortly before the debtor filed for  
24 bankruptcy. Without these claims, albeit contingent on  
25 unliquidated being included, the debtor only disclosed .5



1 percent of total outstanding, unsecured claims against him.

2 However, an additional \$45,592 in unsecured claims have been  
3 filed, none of which were disclosed on the debtor's schedules

4 Another example of the inaccuracies in the debtor's  
5 petition is the listing of monthly expense for health insurance  
6 in the amount of \$324, even though it is paid by LivingScapes.  
7 It also appears that the debtor has not disclosed all of his  
8 debts, since a significant number of unlisted claims have now  
9 been filed. The objecting creditors' claims totaling 3,000 --  
10 \$3,500,000 are 99.5 percent of debtor's total claims, are based  
11 on intentional tort allegations. In a Chapter 7, it is highly  
12 likely that these claims would be not -- non-dischargeable.  
13 Instead, under Chapter 13, the debtor is only paying one  
14 percent of those claims. There may even be a question as to  
15 whether the debtor would be able to discharge any of his debts  
16 under 727 - under Section 727, based on his failure to provide  
17 accurate information regarding his income and expenses, and his  
18 co-mingling of assets and at best bad bookkeeping.

19 The debtor filed a Chapter 7 in the Western District  
20 of Tennessee in 2005. While a single prior case more than  
21 eight years ago is not a significant factor, the fact that the  
22 debtor lied about it on his meeting of creditors questionnaire  
23 indicating that he had never filed for bankruptcy protection  
24 before is significant along with all the other errors. The  
25 debtor's testimony that he didn't un -- not understand the





1 question is simply not credible.

2           Post-petition, the debtor has purchased approximately  
3 \$12,000 in stocks without the authority of the Court. It also  
4 appears that the debtor has continued to make charges on his  
5 Amex accounts without authority. The debtor's motivation is  
6 clear. He only filed this Chapter 13 to avoid the objecting  
7 creditors' tort claims. And as for his sincerity, the debtor  
8 has misrepresented his assets, his debts, his income, his  
9 expenses, and his prior bankruptcy filing. And his testimony  
10 did nothing to explain the inconsistencies, or convince the  
11 Court of his -- of his sincerity or honesty. The Court simply  
12 finds the debtor not credible. The debtor's filing is not in  
13 harmony with the spirit of the bankruptcy code. Bankruptcy is  
14 supposed to give honest debtors a fresh start. Here the debtor  
15 assumed he could avail himself of bankruptcy, provide a limited  
16 and inaccurate view of his assets and income, and then walk  
17 away with minimal liability for his actions against the  
18 objecting creditors.

19           Given the 13 trustee's responsibility for  
20 investigating the debtor, the debtor's replete amendments,  
21 including inadequate bookkeeping and commingling of funds,  
22 present a serious hardship to the Chapter 13 trustee's ability  
23 to do her job and to state whether 1325 has been complied with.  
24 As stated earlier, the Court finds the debtor's testimony not  
25 credible. Many of his answers were evasive and full of



1 excuses. Based on the proof presented, the argument of  
2 counsel, and the debtor's lack of credibility, the Court finds  
3 that neither the bankruptcy petition nor the plan was filed in  
4 good faith. Although lack of good faith is determinative, two  
5 other issues have been raised.

6           Regarding liquidation analysis and disposable income,  
7 the debtor's financial information has been inconsistent and  
8 incomplete. As such, the debtor has not met his burden, making  
9 it impossible for the Court and the Chapter 13 trustee to make  
10 these determinations, and further supports a finding of bad  
11 faith. When a petition is found to be filed in bad faith,  
12 dismissal or conversion is required under 1307(c). The Court  
13 is persuaded that conversion is in the best interest of the  
14 creditors. As stated, the debtor's financial information has  
15 been inconsistent. Accounts have been commingled, as admitted  
16 by the debtor's counsel. His financial information has not  
17 only been inconsistent, but totally unclear. Substantial  
18 income and assets only came to light through the objecting  
19 creditors' discovery. Even the debtor admitted he was a poor  
20 record keeper, further supporting the need for a Chapter 7  
21 trustee. And the debtor testified today as to significant  
22 equity and assets that could benefit all the creditors.  
23 Accordingly, confirmation is denied, and the case is converted  
24 to Chapter 7. Mr. Murphy, Ms. Schweitzer, will you prepare an  
25 order incorporating the Court's findings?

1 MS. SCHWEITZER: Yes, Your Honor, the Chapter 13  
2 trustee would be happy to submit an order -- two separate  
3 orders, if that pleases the Court, one denying confirmation and  
4 one converting the case.

5 THE COURT: All right. Have Mr. Murphy sign off on  
6 those, too.

7 MS. SCHWEITZER: I will, Your Honor.

8 THE COURT: Right. Without anything further, we'll  
9 be adjourned.

10 UNIDENTIFIED: Thank you, Your Honor.

11 (Proceedings concluded at 4:43 p.m.)

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